IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5969 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHARMESH @ NANNU @ NANDU, NITESH SHAH

Versus

COMMISSIONER OF POLICE

Appearance:

MR BC DAVE for Petitioner

MR HN SOMPURA, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 09/08/2000

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 2-4-2000 passed by the Police Commissioner, Surat City who has been declared as a dangerous person.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, her activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. I have heard learned advocate for the petitioner at length and also perused the material on record. Learned AGP has produced affidavit-in-reply affirmed by the respondent No.1. Same way, learned advocate for the petitioner, Mr.B.C.Dave has produced one communication dated 17-5-2000 written by the Home Department to the petitioner through District Jail, Junagadh. Same are ordered to be taken on record.

4. Learned advocate for the petitioner has restricted his argument on the point that representation has been made by the petitioner on 7-4-2000 and though it has been received by the authority, detaining authority has not decided the said representation till 17-5-2000 and, therefore, there is a delay. Learned Addl. Govt. Pleader has fairly admitted the same.

4. In the instant case, it appears that though representation has been sent on 7-4-2000, it remained undecided till 17-5-2000. So, there is a delay. The Apex Court relying upon a decision of the Constitutional Bench in K.M.Abdulla Kunhi and B.L.Abdul Khader V. Union of India, (1991) 1 SCC 476 : (1991 AIRSCW 362), has held in a case of Rajammal Vs. State of Tamil Nadu and another reported in AIR 1999 S.C. 684 as under:

> "Detention-Unexplained delay of five days in considering and disposing detenu's representation-Mere absence of Minister at Headquarters not sufficient to justify delay-Detention vitiated."

It has been further held by the Apex Court in para 9 as

under:

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation.It is not enough to say that the delay was very short. Even longer delay can as well be explained. so the test is not the duration or range of delay, but how it is explained by the authority concerned."

5. In the matter before the Supreme Court in Rajammal (supra), it appeared that there was a delay of five days. For that also, explanation has been putforward by the authority that Minister was on tour for a period of two days. Still, Apex Court has stated that five days consumed in deciding the representation of the detenu is a delay. Whereas in the present case, representation has been made by the detenu on 7-4-2000 which has not been decided till 17-5-2000. Hence, there is a delay of more than 40 days in considering the representation. It is to be noted that in this case no satisfactory explanation has been put forward by the respondents. As representation of the petitioner has not been decided by the authority in time, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the order of detention illegal.

6. In view of the above, the petition is allowed. The order of detention dated 2-4-2000 passed against the petitioner-detenu is hereby quashed and set aside. The detenu-Dharmesh @ Nannu @ Nandu is ordered to be set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute accordingly with no order as to costs.

(R.P.DHOLAKIA,J.)

radhan/